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Report of the United Nations Commission on International Trade Law on the work of its forty-fifth session

Draft resolution

Report of the United Nations Commission on International Trade Law on the work of its forty-fifth session

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Reaffirming its belief that the progressive modernization and harmonization of international trade law, in reducing or removing legal obstacles to the flow of international trade, especially those affecting developing countries, would contribute significantly to universal economic cooperation among all States on a basis of equality, equity, common interest and respect for the rule of law, to the elimination of discrimination in international trade and, thereby, to peace, stability and the well-being of all peoples,

Having considered the report of the Commission,[1]

Reiterating its concern that activities undertaken by other bodies in the field of international trade law without adequate coordination with the Commission might lead to undesirable duplication of efforts and would not be in keeping with the aim of promoting efficiency, consistency and coherence in the unification and harmonization of international trade law,

Reaffirming the mandate of the Commission, as the core legal body within the United Nations system in the field of international trade law, to coordinate legal activities in this field, in particular to avoid duplication of efforts, including among

[1] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17* (A/67/17).

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organizations formulating rules of international trade, and to promote efficiency, consistency and coherence in the modernization and harmonization of international trade law, and to continue, through its secretariat, to maintain close cooperation with other international organs and organizations, including regional organizations, active in the field of international trade law,

1. *Takes note with appreciation* of the report of the United Nations Commission on International Trade Law;[1]

2. *Commends* the Commission for the finalization and adoption of the Guide to Enactment of the United Nations Commission on International Trade Law Model Law on Public Procurement[2] and the recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under its Arbitration Rules as revised in 2010;[3]

3. *Takes note with interest* of the progress made by the Commission in its work in the areas of arbitration and conciliation, online dispute resolution, electronic commerce, insolvency law and security interests;[4]

4. *Notes* the discussions undertaken by the Commission as regards its possible future work in the areas of public procurement and related areas, including public-private partnerships, microfinance and international contract law, and endorses the Commission's agreement to hold one or more colloquiums on microfinance and related matters, possibly in different regions, as well as a colloquium to identify the scope of possible work and primary issues to be addressed in the area of public-private partnerships;[5]

5. *Notes with appreciation* projects of the Commission aimed at promoting the uniform and effective application of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958,[6] including the preparation of a guide on the Convention;[7]

6. *Notes* the decision of the Commission to commend the use of the 2010 edition of the International Institute for the Unification of Private Law Principles of International Commercial Contracts, as appropriate, for their intended purposes, and of Incoterms 2010, as appropriate, in international sales transactions;[8]

7. *Endorses* the efforts and initiatives of the Commission, as the core legal body within the United Nations system in the field of international trade law, aimed at increasing coordination of and cooperation on legal activities of international and regional organizations active in the field of international trade law and at promoting the rule of law at the national and international levels in this field, and in this regard appeals to relevant international and regional organizations to coordinate their legal activities with those of the Commission, to avoid duplication of efforts and to promote efficiency, consistency and coherence in the modernization and harmonization of international trade law;

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[2] Ibid., chap. III.

[3] Ibid., chap. IV and annex I.

[4] Ibid., chaps. V-IX.

[5] Ibid., chaps. X-XII.

[6] United Nations, *Treaty Series*, vol. 330, No. 4739.

[7] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17* (A/67/17), chap. XIII.

[8] Ibid., chap. XIV.

8. *Notes with appreciation* the significant progress made in the coordination and cooperation activities of the Commission in the field of security interests, in particular the publication of "UNCITRAL, Hague Conference and Unidroit texts on security interests", prepared with the contribution of the Permanent Bureau of the Hague Conference and the secretariat of the International Institute for the Unification of Private Law, and the ongoing preparation of a joint set of principles on effective secured transaction regimes in cooperation with the World Bank and outside experts;[9]

9. *Notes* the agreement of the Commission that a coordinated approach to the matter of the law applicable to the proprietary effects of assignments of receivables is in the interest of all States and its request to the Secretariat to cooperate closely with the European Commission with a view to ensuring a coordinated approach to the matter, taking into account the approach followed in the United Nations Convention on the Assignment of Receivables in International Trade[10] and the *UNCITRAL Legislative Guide on Secured Transactions*;[11]

10. *Reaffirms* the importance, in particular for developing countries, of the work of the Commission concerned with technical cooperation and assistance in the field of international trade law reform and development, and in this connection:

(a) Welcomes the initiatives of the Commission towards expanding, through its secretariat, its technical cooperation and assistance programme, and in that respect encourages the Secretary-General to seek partnerships with State and non-State actors to increase awareness about the work of the Commission and facilitate the effective implementation of legal standards resulting from its work;

(b) Expresses its appreciation to the Commission for carrying out technical cooperation and assistance activities and for providing assistance with legislative drafting in the field of international trade law, and draws the attention of the Secretary-General to the limited resources that are made available in this field;

(c) Expresses its appreciation to the Governments whose contributions enabled the technical cooperation and assistance activities to take place, and appeals to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the United Nations Commission on International Trade Law Trust Fund for Symposia and, where appropriate, for the financing of special projects, and otherwise to assist the secretariat of the Commission in carrying out technical cooperation and assistance activities, in particular in developing countries;

(d) Reiterates its appeal to the United Nations Development Programme and other bodies responsible for development assistance, such as the World Bank and regional development banks, as well as to Governments in their bilateral aid programmes, to support the technical cooperation and assistance programme of the Commission and to cooperate and coordinate their activities with those of the Commission in the light of the relevance and importance of the work and programmes of the Commission for the promotion of the rule of law at the national and international levels and for the implementation of the United Nations

[9] Ibid., paras. 165-168.

[10] Resolution 56/81, annex.

[11] United Nations publication, Sales No. E.09.V.12; see also *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 168.

development agenda, including the achievement of the Millennium Development Goals;

11. *Takes note with interest* of the note by the Secretariat setting out a number of issues for consideration by the Commission in setting the parameters for a strategic plan for the Commission,[12] and endorses the Commission's agreement to consider and provide guidance on, inter alia, the strategic considerations at its forty-sixth session;[13]

12. *Calls upon* Member States, non-member States, observer organizations and the Secretariat to apply the rules of procedure and methods of work of the Commission, taking into account the summary of conclusions as reproduced in annex III to the report on the work of its forty-third session,[14] with a view to ensuring the high quality of the work of the Commission and international acceptability of its instruments, and in this regard recalls its previous resolutions related to this matter;

13. *Welcomes* the opening, on 10 January 2012, of the United Nations Commission on International Trade Law Regional Centre for Asia and the Pacific, in the Republic of Korea, as a novel yet important first step for the Commission in reaching out and providing technical assistance to developing countries in the region, notes with satisfaction expressions of interest from other States, including Kenya and Singapore, in hosting regional centres of the Commission and the request by the Commission to the Secretariat to further pursue administrative arrangements with the Governments of Kenya and Singapore for the establishment of such centres, and requests the Secretary-General to keep the General Assembly informed of developments regarding the establishment of regional centres, in particular, their funding and budgetary situation;[15]

14. *Appeals* to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the trust fund established to provide travel assistance to developing countries that are members of the Commission, at their request and in consultation with the Secretary-General, in order to enable renewal of the provision of that assistance and to increase expert representation from developing countries at sessions of the Commission and its working groups, necessary to build local expertise and capacities in the field of international trade law in those countries to facilitate the development of international trade and the promotion of foreign investment;

15. *Decides*, in order to ensure full participation of all Member States in the sessions of the Commission and its working groups, to continue, in the competent Main Committee during the sixty-seventh session of the General Assembly, its consideration of granting travel assistance to the least developed countries that are members of the Commission, at their request and in consultation with the Secretary-General;

16. *Endorses* the conviction of the Commission that the implementation and effective use of modern private law standards on international trade are essential for

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[12] A/CN.9/752 and Add.1.

[13] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17* (A/67/17), chap. XXI.

[14] Ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17).

[15] Ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), chap. XIX.

advancing good governance, sustained economic development and the eradication of poverty and hunger and that the promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels, including through the Rule of Law Coordination and Resource Group, supported by the Rule of Law Unit in the Executive Office of the Secretary-General;

17. *Takes note with appreciation*, in this regard, of the rule of law briefing by the Rule of Law Unit, held during the forty-fifth session of the Commission,[16] which allowed the Commission to contribute its views to the high-level meeting of the General Assembly on the topic "The rule of law at the national and international levels", held on 24 September 2012;

18. *Notes* the actions taken by the Commission after the briefing on the rule of law, in particular the messages of the Commission to the high-level meeting addressed to States and the United Nations, including recommended steps that should contribute to building the local capacity of States to continually engage in commercial law reforms at the country level and in a coordinated fashion in the rule-formulating activities of regional and international bodies;[17]

19. *Reiterates its request* to the Secretary-General, in conformity with General Assembly resolutions on documentation-related matters,[18] which, in particular, emphasize that any invitation to limit, where appropriate, the length of documents should not adversely affect either the quality of the presentation or the substance of the documents, to bear in mind the particular characteristics of the mandate and functions of the Commission in the progressive development and codification of international trade law when implementing page limits with respect to the documentation of the Commission;[19]

20. *Requests* the Secretary-General to continue providing summary records of the meetings of the Commission, including committees of the whole established by the Commission for the duration of its annual session, relating to the formulation of normative texts, takes note of the Commission's confirmation that good-quality summary records remain the best available option for preserving complete and accurate *travaux préparatoires* of the Commission's work in the most user-friendly and reliable way, welcomes the Commission's willingness to consider at the same time modern solutions that might address existing problems with the issuance of summary records and add useful features in the use of the Commission's records, and endorses the agreement of the Commission to assess at its forty-seventh session, in 2014, the experience of using digital recordings and, on the basis of that assessment, take a decision regarding the possible replacement of summary records by digital recording;[20]

21. *Welcomes* the review by the Commission of the proposed biennial programme plan for subprogramme 5 (Progressive harmonization, modernization and unification of the law of international trade) of programme 6 (Legal affairs) of

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[16] Ibid., chap. XX.

[17] Ibid., paras. 211-227.

[18] Resolutions 52/214, sect. B, 57/283 B, sect. III, and 58/250, sect. III.

[19] Resolutions 59/39, para. 9, and 65/21, para. 18; see also *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 17* (A/59/17), paras. 124-128.

[20] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17* (A/67/17), paras. 241-249.

the proposed strategic framework for the period 2014-2015,[21] takes note that the Commission expressed concern that the resources allotted to the Secretariat under subprogramme 5 were insufficient for it to meet the increased demand from developing countries and countries with economies in transition for technical assistance with law reform in the field of commercial law, also takes note that the Commission urged the Secretary-General to take steps to ensure that the comparatively small amount of additional resources necessary to meet a demand so crucial to development are made available promptly,[22] and recalls paragraph 48 of its resolution 66/246 regarding the rotation scheme of meetings between Vienna and New York;

22. *Notes* the concern expressed by the Commission over the lack of sufficient resources in its secretariat for responding to the growing need for the uniform interpretation of Commission texts, which is considered indispensable for their effective implementation, and also notes that the Commission encouraged the Secretariat to explore various means of addressing this concern, inter alia, by building partnerships with interested institutions and establishing within the Commission's secretariat a pillar concentrating on the promotion of ways and means of interpreting uniformly Commission texts, in particular by sustaining and expanding the system for the collection and dissemination of case law on Commission texts (the CLOUT system);[23]

23. *Stresses* the importance of promoting the use of texts emanating from the work of the Commission for the global unification and harmonization of international trade law, and to this end urges States that have not yet done so to consider signing, ratifying or acceding to conventions, enacting model laws and encouraging the use of other relevant texts;

24. *Welcomes* the preparation of digests of case law relating to the texts of the Commission, notes with appreciation the continuing increase in the number of abstracts available through the CLOUT system, and welcomes the publication of the UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods, 2012 edition, and the *UNCITRAL 2012 Digest of Case Law on the Model Law on International Commercial Arbitration*,[24] as well as the agreement of the Commission that a digest of case law on the Model Law on Cross-Border Insolvency be prepared, subject to the availability of resources in the Secretariat.[25]

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[21] A/67/6 (Prog. 6).

[22] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17* (A/67/17), paras. 250 and 251.

[23] Ibid., para. 252.

[24] United Nations publication, Sales No. E.12.V.9.

[25] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 156.